

Appl. No. 10/810,954
Amdt. dated Dec. 30, 2005
Reply to Office Action of Sept. 30, 2005

REMARKS

This amendment is being filed in response to the Office Action mailed September 30, 2005 in which the Examiner rejected all 23 claims in the present application. Applicant respectfully requests reconsideration in view of the amendments to the claims and the following remarks:

Applicant's Claims Are Not Anticipated By the Comer, et al Reference

Claims 1, 2, 4, 8, 9, and 20-23 were rejected under 35 USC 102(b) as being anticipated by the Comer et al. Patent. For there to be anticipation of applicant's claims by Comer, Comer must teach every element of the rejected claims. (MPEP § 2131) Each and every element must be expressly or inherently described. Applicant submits that there is no inherent description in the Comer reference of "providing a controlled group of users or purchasers with unlocking means." The Examiner asserts that because Comer discloses a payment kiosk that it is implied that there will be an enrolled group of users. In fact, Comer teaches just the opposite. In column 4, beginning at line 28, Comer states that:

"Then, the payment information is processed and approval information therefrom is generated which indicates a success or failure of the payment information to meet a predetermined condition of creditworthiness, open account, etc. The approval information is then transmitted back to the module to enable the dispensing of fuel from the dispensing means, using the electrical energy generated on-site."

Clearly, there is no enrolled group since the creditworthiness has to be checked. Comer unquestionably teaches that anyone can use his fuel dispenser if their card

Appl. No. 10/810,954
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meets the creditworthiness test. By contrast, applicant's invention requires enrollments so that only those who have been enrolled and pre-approved can unlock the pumps and even access the payment means. Accordingly, there is no inherency to compensate for the lack of a missing element in the reference. As a result, Comer does not anticipate applicant's claims and it is respectfully requested that the rejection of claims 1, 2, 4, 8, 9, and 20-23 be withdrawn.

Applicant has amended claim 2 to include the features of claim 3. It is submitted that the Comer reference does not include all the features of claim 2 and it is not implied nor inherent that any attendant would have "pre-arranged access" to fire, police, and emergency medical service as applicant's claim requires. In addition, the steps of the method of claims 4, and 20-23, particularly the steps of claim 23, are not inherent in the method for dispensing fuel use. Applicant submits that since all elements of applicant's claims are not disclosed by Comer, it can not be inherent to operate applicant's method of dispensing fuel if the elements are missing. Again, withdrawal of the rejection based on Comer is respectfully requested.

***Applicant's Claims Are Not Obvious In View
Of The Combination of the Comer,
Bartlett, Struthers or Webb References***

Claims 3, 6, 7, 14, and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Comer et al. in view of Bartlett and Struthers. Applicant has now combined claim 3 with claim 2 so that the rejection of that claim no longer applies. Regarding the rejection of claims 6, 7, 14, and 15, applicant has pointed out above that Comer does not disclose the use of a control group so that Comer does not provide for

Appl. No. 10/810,954
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"establishing a purchasing group" nor does Comer provide for locking means for said control group. Applicant submits that the obvious thing to do is to provide pumps and a payment method which all members of the public can use. The additional step of requiring a locking means in a select group teaches away from what one skilled in the art would do. One skilled in the art would try to make the use of the fuel dispensing method available to as many as possible. Accordingly, applicant has taken a step which demonstrates that his invention is not obvious and has moved beyond the prior art. Accordingly, it is respectfully requested that the rejection on claims 6, 7, 14, and 15 be withdrawn.

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Comer and in view of Webb. Applicant has already demonstrated above that Comer, the primary reference, teaches away from any combination of the cited references. In claim 5 applicant also has the feature that the canopy covers at least the vehicle that is being re-fueled so that the vehicle is not only protected from rain but dispensing of chemicals in reaction to an emergency is most effective coming from above. Accordingly, it is respectfully requested that the rejection of claim 5 be withdrawn.

***Applicant's Claims Are Not Obvious
In View Of Comer, Minerva, and Hartsell***

Claims 10-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Comer in view of the Minerva reference. Again, Comer, the primary reference, does not disclose a control group. This deficiency can not be made up by the addition of other references. Withdrawal of the rejection is respectfully requested.

Appl. No. 10/810,954
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Claims 13 and 16-19 were rejected over 35 U.S.C. 103(a) as being unpatentable over Comer et al. in view of Hartsell. Again, it is not obvious to modify the Comer reference as Comer does not take the inventive step that applicant has taken and the cited reference does not provide the difference between applicant's invention and the prior art. Furthermore, in claim 16, not only has applicant made it clear that the positioning of the vehicle being re-fueled is under the security canopy but applicant has also included the step of contracting with a security agency which preferably would be one of the national security agencies with trained surveillance personnel. Again, this step is missing and is not an obvious one for anyone to take. The elimination of skilled personnel is the obvious thing to do in order to reduce labor costs and is what the prior art would teach one skilled in the art to do. On the other hand, applicant is providing for a more highly skilled and trained person to carry out the method of his invention.

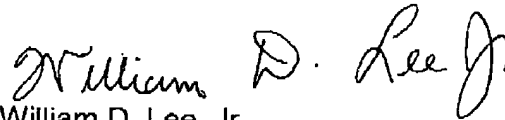
CONCLUSION

Applicant has demonstrated that his invention is not anticipated nor made obvious by the Comer reference. Comer is directed to providing fuel in remote locations such as Alaska where issues such as providing electricity for the station and keeping the fuel warm enough to pump are critical. Applicant has, on the other hand, provided a method which is particularly useful in urban areas for the convenience of a selected pre-approved group. Applicant has made the provision of such fuel dispensing as safe as currently possible and, in doing so, has taken a step forward which is not obvious thereby provides a significant benefit for those enrolled in the purchasing group. The difference between applicant's invention and the cited reference is not obvious and

Appl. No. 10/810,954
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Reply to Office Action of Sept. 30, 2005

meets the *Graham* standard for patentability. Accordingly, it is respectfully requested that the rejections of applicant's claims be withdrawn and that the claims as amended be allowed.

Respectfully submitted,



William D. Lee, Jr.
Registration No. 22,660
McNAIR LAW FIRM, P.A.
P.O. Box 10827
Greenville, SC 29603-0827
Telephone: (864) 232-4261
Attorney for the Applicant